

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **November 16, 2000**, at 10:00 a.m.
in the Auditorium of the California State Building,
1350 Front Street, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **November 16, 2000**, following the Public Meeting,
in the Auditorium of the California State Building,
1350 Front Street, San Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **November 16, 2000**, following the Public Hearing,
in the Auditorium of the California State Building,
1350 Front Street, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

JERE W. INGRAM, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to the Construction Safety Orders, General Industry Safety Orders, and Ship Building, Ship Repairing, and Ship Breaking Safety Orders in Title 8 of the California Code of Regulations, as indicated below, at its Public Hearing on **November 16, 2000**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Chapter 4, Subchapter 4, Article 18
 Section 1629
 Double Cleat Ladders

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Chapter 4, Subchapter 7, Article 108
 Sections 5157 and 5158
 SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY
 ORDERS
 Subchapter 18, Article 4
 Section 8355
 Confined Spaces

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 18
Section 1629
Double Cleat Ladders

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH OVERVIEW

Existing Title 8 section 1629 requires that double cleat ladders be used when ladders are allowed instead of a stairway as the primary access or exit from a work area with 25 or more employees or where two-way traffic is expected. The double cleat ladder used for this purpose shall not exceed 30 feet in length and shall conform to the requirements for ladders in Article 25 of the Construction Safety Orders. In Article 25, section 1676 requires that job-made double cleat ladders shall not exceed 24 feet in length.

The proposed revision will remove the inconsistency between section 1629 and 1676 by reducing the length limit for double cleat ladders in section 1629 from 30 feet to 24 feet. The effect of this proposal will be to reduce confusion in the regulated public and limit the length of double cleat ladders to 24 feet when such ladders are used as means of access or egress to a construction work area.

The proposal is at least as effective as the federal OSHA construction standards for stairways and ladders in Title 29 CFR Subpart X, sections 1926.1050 to 1926.1060 which have no specific length limit for double cleat ladders.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The proposal will not significantly affect housing costs.

Impact on Businesses

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Entities

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in the notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES CONSIDERED

Our agency must determine that no alternative considered by us would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 108
Sections 5157 and 5158
SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY
ORDERS
Subchapter 18, Article 4
Section 8355
Confined Spaces

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH OVERVIEW

Existing Title 8 sections 5157 and 8355 require an employer to protect employees from the confined space hazards of an oxygen-enriched atmosphere and to communicate such hazard information to other employers working in or around the confined space. Existing Title 8 section 5158 requires a confined space program for employers not covered by sections 5157 or 8355. Section 5158 does not require employers to protect against oxygen-enriched atmospheres nor does it require that hazard information be conveyed to other employers working in or around the confined space. In 1994, two construction employees working under the requirements of section 5158 died while working in a sewage facility. Allegedly, the construction employer was unaware that the sewage facility used oxygen to accelerate the treatment process. Also, the sewage facility employer was operating under the confined space requirements of section 5157 and was allegedly aware of the hazards of an oxygen-enriched atmosphere. However, the hazard information was possibly not conveyed to the construction employer since the contractor did not fall under the scope of section 5157.

The proposed revisions will specify that all confined space standards address the hazards of oxygen-enriched atmospheres. The proposal will also incorporate work practice and multi-employer communication procedures in sections 5157, 5158 and 8355 to ensure that all employers in or around a confined space are aware of all possible confined space hazards.

This proposed rulemaking action contains several nonsubstantive, editorial, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition, the following actions are proposed:

Section 5157. Permit-Required Confined Spaces.

Existing section 5157 applies to those employers specified in section 5156(b)(1) and contains the requirements for practices and procedures to protect employees from the hazards of entry into permit-required confined spaces.

Existing subsection 5157(c)(2) requires employers to inform exposed employees of the existence, location and hazards of confined spaces in their facility. This hazard information can be conveyed by posting danger signs or the employer may use other equally effective means. The proposed revision will specify that when other employers are performing work in the area, that they be warned of confined space hazards in a similar manner.

Existing subsection 5157(c)(3) requires that when employees are not expected to enter a confined space, the employer shall take effective measures to prevent such employees from inadvertently entering the space. The proposed revision will specify that when other employers are performing work in the area and their employees are not intended to enter the confined space, that similar measures be used to prevent inadvertent entry.

Existing subsections 5157(c)(8) and (d)(11) require host employers to provide their contractors with hazard information about confined spaces and obtain similar information from the contractor if they will be creating a hazard that will affect the host employer's employees. The host employer must also ensure that contractors have a confined space program that meets the requirements of section 5157. The proposal will specify that the host employer have similar hazard communication with employers covered by sections 5158 or 8355 that are working in the confined space. The proposal will also require the host employer to ensure contractors and other employers covered by sections 5158 or 8355 have confined space programs that meet those sections instead of the program requirements of section 5157.

Section 5158. Other Confined Space Operations.

Existing section 5158 prescribes minimum standards for industries and operations specified in section 5156(b)(2) to prevent employee exposure to dangerous air contamination and/or oxygen deficiency in confined spaces.

Existing subsections 5158(a) and (b) state that the scope and definition of confined space hazards covered by the standard include dangerous air contamination and/or oxygen deficiency. The proposed revisions will expand the scope and definitions to include the confined space hazard of oxygen enrichment and allow employers that meet the requirements of section 5157 to be deemed in compliance with section 5158.

Existing subsections 5158(c), (d) and (e) require employers to have an effective confined space operating procedure, employee training program, pre-entry testing and confined space operation. The proposed revisions will specify that the operating procedure and confined space operation address the potential hazards of multi-employer worksites. The proposed revisions will also specify that the requirements of all three subsections address the hazard of oxygen enrichment when applicable.

Section 8355. Confined and Enclosed Spaces and Other Dangerous Atmospheres.

Existing section 8355 contains the requirements for protecting employees from the hazards of working in confined and enclosed spaces and other dangerous atmospheres in the ship building, ship repairing and ship breaking industry.

Existing subsection 8355(e)(6) requires the employer to exchange hazard information with other employers. The proposal will specify that the employer exchange hazard information with all other employers including those covered by sections 5157 and 5158. The proposal will also specify the type of hazard information to be exchanged.

The proposal is at least as effective as the federal OSHA permit-required confined space standard which has substantially the same requirements in Title 29 CFR 1910.146 for general industry and Title 29 CFR 1915.12 for the shipyard industry.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

It is not anticipated that the proposed additional requirements for oxygen-enriched confined spaces or multi-employer worksites will result in any significant costs or savings to state agencies.

Impact on Housing Costs

The proposal will not significantly affect housing costs.

Impact on Businesses

It is not anticipated that the proposed additional requirements for oxygen-enriched confined spaces or multi-employer worksites will result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with other businesses. As proposed, businesses will need to ensure that if they have confined space operations, employees must be protected from the hazards of oxygen-enriched atmospheres and communication of hazards will occur if other employers are working at the same site.

Cost Impact on Private Persons or Entities

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in the notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES CONSIDERED

Our agency must determine that no alternative considered by us would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards regulations as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a description of the problems addressed by the proposed actions, a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives to lessen the impact on small businesses is also available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be mailed so that they are received no later than November 10, 2000. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on November 16, 2000 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided in the following paragraph. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning the proposed action may be directed to the Executive Officer, John D. MacLeod at (916) 274-5721.

You can access the Board's monthly notice on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JERE W. INGRAM, CHAIRMAN